

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PATRICIA ROACH, ) Case No. **CV 08-4746-JFW (AGRx)**  
 )  
Plaintiff, )  
 )  
v. ) **FINDINGS OF FACT AND**  
 ) **CONCLUSIONS OF LAW**  
KAISER PERMANENTE LONG TERM )  
DISABILITY PLAN; )  
METROPOLITAN LIFE INSURANCE )  
COMPANY, )  
 )  
Defendants. )  
\_\_\_\_\_ )

This action came on for court trial on April 14, 2009. Sara Smith Ray of Altman & Ray LLP appeared for Plaintiff Patricia Roach ("Plaintiff"). Rebecca A. Hull appeared for Defendants Kaiser Permanente Long Term Disability Plan and Metropolitan Life Insurance Company(collectively "Defendants").

After considering the evidence, briefs, and argument of counsel, the Court makes the following findings of fact and conclusions of law:

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## Findings Of Fact<sup>1</sup>

### **I. Introduction**

This is an action under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* ("ERISA") for recovery of long term disability benefits under a group long term disability plan issued by Metropolitan Life Insurance Company ("MetLife") to Kaiser Foundation Health Plan, Inc. for the benefit of employees of the Southern California Permanente Medical Group ("SCPMG"). On July 18, 2008, Plaintiff filed a Complaint seeking review of Defendants' denial of Plaintiff's long term disability ("LTD") benefits under the Kaiser Permanente Long Term Disability Plan, insured by MetLife (the "Plan").

### **II. Facts**

Plaintiff commenced her employment with SCPMG in 1975. As a benefit of her employment with SCPMG, Plaintiff was eligible for long term disability insurance under the Plan issued by MetLife. At all relevant times, Plaintiff was a participant in the Plan. Pursuant to the terms of the Plan, MetLife is the claims administrator for claims made under the Plan and is also a Plan fiduciary.

#### **A. The Plan**

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<sup>1</sup> The Court has elected to issue its decision in narrative form because a narrative format more fully explains the reasons supporting the Court's conclusions. Any finding of fact that constitutes a conclusion of law is hereby adopted as a conclusion of law, and any conclusion of law that constitutes a finding of fact is hereby adopted as a finding of fact.

1 After a 180 day Elimination Period (during which no  
2 benefits are paid), the Plan provides long term disability  
3 ("LTD") benefits if the participant became disabled while  
4 covered under the Plan. (AR 0024)

5 The Plan defines "disabled" or "disability" as follows:

6 "Disabled" or "Disability" means that, due to  
7 sickness, pregnancy or accidental injury, you are  
8 receiving Appropriate Care and Treatment from a  
9 Doctor on a continuing basis; and

- 10 1. during your Elimination Period and the next 24  
11 month period, you are unable to earn more than  
12 80% of your Predisability Earnings or Indexed  
13 Predisability Earnings at your Own Occupation  
14 for any employer in your Local Economy; or
- 15 2. after the 24 month period, you are unable to  
16 earn more than 80% of your Indexed  
17 Predisability Earnings from any employer in  
18 your Local Economy at any gainful occupation  
19 for which you are reasonably qualified taking  
20 into account your training, education,  
experience and Predisability Earnings.

21 (AR 0025) "Own occupation" is defined as:

22 the activity that you regularly perform, as  
23 determined by the Employer, and that serves as your  
24 source of income. . . .Own occupation is not limited  
25 to the specific position you held with your  
26 Employer. It may be a similar activity that could  
27 be performed with your Employer or any other  
28 Employer.

21 (AR 0025). If the participant is disabled "due to a Mental  
22 or Nervous Disorder or Disease," the Plan limits coverage to  
23 36 months of disability, including the 180 day Elimination  
24 Period. (AR 0030) In effect, after accounting for the  
25 Elimination Period during which no benefits are payable, a  
26 participant who is disabled due to a Mental or Nervous  
27 Disorder or Disease is entitled to only 30 months of  
28 disability payments. "Mental or Nervous Disorder or Disease"

1 means "a medical condition of sufficient severity to meet the  
2 diagnostic criteria established in the current Diagnostic And  
3 Statistical Manual of Mental Disorders. You must be  
4 receiving Appropriate Care and Treatment for your condition  
5 by a mental health Doctor." (AR 0030)

6 B. Plaintiff's Occupation and her Disability

7 Plaintiff began her employment with SCPMG on October 13,  
8 1975, and held a number of positions during her approximately  
9 30 years of employment with SCPMG. She began her most recent  
10 position as a Project Manager/Ambulatory Care Registered  
11 Nurse Manager in 2002. (AR 0098; 0203-206) Her  
12 responsibilities included overseeing the remodeling and  
13 building of a new facility, which required her to meet with  
14 architects and facility administrators regarding design. (AR  
15 0259) She typically worked 12 to 14 hour days. (AR 0259)  
16 According to Plaintiff's supervisor, her position required  
17 overtime on a routine basis, and necessitated "frequent"  
18 stressful situations (34 to 66 percent of the time) and  
19 "continual" interpersonal relations with others (67 to 100  
20 percent of the time). (AR 0108) Her position was not capable  
21 of being modified by her employer. (AR 0109)

22 In September 2004, Plaintiff awoke with intense chest  
23 pains that required her to be hospitalized from September 10  
24 to 15, 2004. (AR 0129) After Plaintiff's hospital stay, she  
25 remained at home for two days, and then returned to work on  
26 September 20, 2004. (AR 0129) However, on November 4, 2004,  
27 Plaintiff's primary care physician, Sue Park, M.D.  
28 recommended that Plaintiff see a psychologist and that she

1 take time off from work due to significant stress. (AR 0195;  
2 AR 0280) Plaintiff has not worked since then. (AR 0129)

3 On December 1, 2004, Dr. Park submitted a "Documentation  
4 of Medical Impairment (DMI)" form to Plaintiff's employer,  
5 stating that Plaintiff was completely unable to work for 60  
6 days due to "anxiety/stress/phobic disorders." (AR 0275)  
7 Plaintiff's medical leave was thereafter extended by her  
8 physicians multiple times. (AR 0153, 0171, 0182, 0201, 0227,  
9 0245)

10 On February 2, 2005, Plaintiff was examined by Jeffrey  
11 Hirsch, M.D., an internist, in connection with Plaintiff's  
12 application for workers' compensation. (AR 0258-266) He  
13 determined that Plaintiff suffered from occupational stress,  
14 multiple stress-driven physical complaints, temporomandibular  
15 joint syndrome ("TMJ") with bruxism, and musculoskeletal  
16 pain. (AR 0258; 0263) He opined that "[i]t is medically  
17 reasonably probable that Ms. Roach's underlying tendency  
18 toward hypertension has been 'lit up' due to her exposure to  
19 stress." (AR 0264) Dr. Hirsch concluded that Plaintiff was  
20 "temporarily totally disabled" and that the cause of her  
21 medical problems required further information, including  
22 review of medical records and referral to specialists. (AR  
23 0264)

24 Dr. Hirsch and Dr. Park referred Plaintiff to several  
25 specialists to determine the cause of her complaints and  
26 symptoms. Although these specialists for the most part found  
27 no significant physical abnormalities, there was evidence  
28 / / /

1 that Plaintiff suffered from a psychological condition. (AR  
2 0251, 0249, 0156)

3 On March 11, 2005, Plaintiff was examined by Richard M.  
4 Hyman, M.D., an internist and cardiologist in connection with  
5 her workers' compensation claim. (AR 0211-212) After  
6 conducting a physical examination and reviewing the results  
7 of Plaintiff's lab tests, Dr. Hyman diagnosed Plaintiff with  
8 hypertension. (AR 0212) Although Plaintiff "tend[ed] to  
9 suggest" that every medical problem she experienced was  
10 stress or work related, Dr. Hyman noted that "ultimately in  
11 order to medically come to probable conclusions from an  
12 internal medicine standpoint, it will have to be identified  
13 whether or not [Plaintiff] has had a true history of  
14 perceived stress." (AR 0212) He concluded that "if it is  
15 determined that she meets psychiatric criteria for  
16 Psychological Factors Affecting Physical Condition[,] the  
17 only possible work restriction would be of a stress-related  
18 nature but . . . this should be based on psychological  
19 criteria and not because she has a stress affected internal  
20 medicine condition." (AR 0212)

21 In early May 2005, Dr. Hirsch recommended that Plaintiff  
22 undergo a complete psychological evaluation and treatment for  
23 her emotional symptoms. (AR 0202, 0213) In response to Dr.  
24 Hirsch's request, on May 25, 2005, David Lopata, Ph.D., a  
25 psychologist, examined and assessed Plaintiff for a period of  
26 six hours. (AR 0202) For three of these hours, Dr. Lopata  
27 conducted a face-to-face clinical interview and mental status  
28 examination of Plaintiff. (AR 0202) Plaintiff spent the

1 remaining three hours self-administering a number of  
2 psychometric tests, including the Shipley Institute of Living  
3 Scale, Beck's Depression Inventory-II, Beck's Hopelessness  
4 Scale, the State-Trait Anxiety Inventory, the Wahler Physical  
5 Symptoms Inventory, and the Minnesota Multiphasic Personality  
6 Inventory-2. (AR 0202) After evaluating the test results and  
7 reviewing Plaintiff's medical reports, Dr. Lopata diagnosed  
8 Plaintiff with Depressive Disorder Not Otherwise Specified  
9 with Anxious Features. (AR 0219) He opined that "more than  
10 50%" of the causation of Plaintiff's Depressive Disorder was  
11 due to her employment with SCPMG, based on the "heavy  
12 workload, deadlines, time pressures, long working hours and a  
13 significant degree of responsibility for staffing patterns,  
14 patient care, and building projects." (AR 0220) Dr. Lopata  
15 concluded that Plaintiff should be considered "temporarily  
16 totally disabled on a psychological premise[]," and stated  
17 that "it is difficult to know if and when [Plaintiff] can  
18 return to her old employment setting . . . [H]owever, from a  
19 prophylactic point of view if she does so, she would have to  
20 have a setting where there is less than the average amount of  
21 stress." (AR 0221)

22 On June 20, 2005, after reviewing Dr. Lopata's initial  
23 psychological report, Dr. Hirsch adopted Dr. Lopata's  
24 findings as his own. (AR 0193-200)

25 Plaintiff continued to see Dr. Lopata for treatment of  
26 her psychological condition. On July 14, 2005, after several  
27 more sessions with Plaintiff, Dr. Lopata completed a periodic  
28 Treating Physician's Progress Report, noting that Plaintiff

1 described herself as feeling "trapped at work" because of the  
2 long hours and extreme workload, she had difficulty sleeping,  
3 and suffered from headaches, lower back spasms, persistent  
4 tiredness and fatigue, and periodic gastrointestinal  
5 distress. (AR 0188) Although Dr. Lopata encouraged the use of  
6 antidepressants, Plaintiff was resistant to taking anti-  
7 depressants and fairly committed to dealing with her  
8 depression and anxiety on her own. (AR 0188) Dr. Lopata  
9 concluded that Plaintiff "remain[ed] totally permanently  
10 disabled on a psychological premise." (AR 0189)

11 On September 22, 2005, Dr. Lopata completed another  
12 Treating Physician's Progress Report, again concluding that  
13 Plaintiff "remain[ed] totally permanently disabled on a  
14 psychological premise." (AR 0179-180) He noted that Plaintiff  
15 continued to "be rather sullen, somber, and depressed," and  
16 that Plaintiff described feelings of being tired, worn out,  
17 and easily fatigued. (AR 0179) Plaintiff had "little trust  
18 or positive affect concerning her previous place of  
19 employment," and after seeing some people from work, she felt  
20 uncomfortable and ill at ease. (AR 0179)

21 On November 18, 2005, Dr. Lopata completed another  
22 Treating Physician's Progress Report, noting that Plaintiff  
23 continued to report multiple symptoms, such as persistent  
24 headaches, lower back pain, leg spasms, high blood pressure,  
25 fatigue, and periodic bouts of tearfulness. (AR 0116-117)  
26 While Dr. Lopata reported that Plaintiff was "thinking less  
27 frequently of her previous employer although such thoughts  
28 continue[d] to cause her pain and hurt" and that she was



1 "feeling somewhat less depressed and overwhelmed," he opined  
2 that Plaintiff "remain[ed] temporarily totally disabled on a  
3 psychological premise." (AR 0116-117)

4 Meanwhile, throughout 2005, Dr. Hirsch also advised  
5 Plaintiff to remain off work, and in November 2005, opined  
6 that Plaintiff was temporarily totally disabled. (AR 0182,  
7 0171, 0153, 0139, 0106)

8 C. MetLife's Denial of Plaintiff's Benefits

9 On November 4, 2005, Plaintiff submitted her claim for  
10 LTD benefits, stating that she was unable to work due to a  
11 back injury, chronic pain, stress, and uncontrolled  
12 hypertension. (AR 0129)

13 Because of Plaintiff's "multiple diagnoses and the large  
14 amount of medical documentation submitted," MetLife requested  
15 that Robert D. Petrie M.D. of Elite Physicians, Ltd., a  
16 physician who is Board Certified in preventative medicine,  
17 occupational medicine, and family practice, review  
18 Plaintiff's file. (AR 0084) On February 16, 2006, Dr. Petrie  
19 reviewed Plaintiff's file, including Dr. Hirsch's records  
20 prepared between February and December 2005, and Dr. Lopata's  
21 records prepared between May and November 2005. (AR 0094)  
22 Based upon his review, Dr. Petrie concluded that Plaintiff's  
23 primary diagnoses were depression and anxiety, and determined  
24 that "Ms. Roach's reported job dissatisfaction and perception  
25 of work-related stress have resulted in her absence from the  
26 workplace, but there is no demonstrated impairment which  
27 actually prevents the performance of her job duties. . . .  
28 Ms. Roach could perform her own occupation with a different

1 employer or in a different location or with a different  
2 supervisor." (A0090-A0096)

3 By letter dated February 22, 2006, MetLife denied  
4 Plaintiff's LTD claim, largely repeating Dr. Petrie's  
5 conclusions: "Your reported job dissatisfaction and  
6 perception of work-related stress have resulted in your  
7 absence from the workplace. There is; however, no  
8 demonstrated impairment which actually prevents the  
9 performance of your job duties. You are capable of  
10 performing your own occupation with a different employer, or  
11 with a different supervisor. Your complaints of depression  
12 are only related to the specifics of the job environment in  
13 which you were working." (AR 0084-86) Accordingly, MetLife  
14 concluded that Plaintiff did not meet the definition of  
15 "disabled" under the Plan. (AR 085) MetLife advised Plaintiff  
16 of her appeal rights under the Plan. (AR 0085)

17 D. Plaintiff's Appeal

18 On June 27, 2006, Plaintiff's counsel sent MetLife a  
19 letter, entitled "APPEAL OF DENIAL OF LONG TERM DISABILITY  
20 BENEFITS," stating in relevant part:

21 Ms. Roach hereby seeks review of MetLife's  
22 February 22, 2006, denial of long term disability  
23 benefits under the above-referenced policy.  
24 However, before Ms. Roach could adequately present  
her case and obtain a full and fair review, she must  
have an opportunity to review the documents relied  
on by MetLife in denying her claim. . . .

25 Once I receive the above-described documents  
26 and information, I will submit written comments,  
27 arguments and/or medical documentation on behalf of  
Ms. Roach.

28 (AR 0076-78)

1 In July 2006, in response to her request for documents,  
2 MetLife provided Plaintiff's counsel with the complete claim  
3 file. (AR 0080)

4 After receiving the claim file, Plaintiff's counsel did  
5 not submit written comments, arguments, or medical  
6 documentation to MetLife and did not communicate with MetLife  
7 until May 4, 2007. In a letter on that date, Plaintiff's  
8 counsel inquired about the status of Plaintiff's appeal,  
9 stating:

10 I am still awaiting a reply to our appeal in  
11 this matter. As you are aware Ms. Roach is  
12 receiving SSDI benefits due to the subject  
13 disability. Dr. Lopata opines that she is disabled  
14 from physical and psychological limitations and  
15 restrictions. Please respond.

16 (AR 0073) In response, on May 15, 2007, MetLife sent a letter  
17 to Plaintiff's counsel, stating that "[t]o date, we have not  
18 received a written appeal request for Ms. Roach's Long Term  
19 Disability Claim" and pointing out that in Plaintiff's  
20 counsel's previous letter, she had stated that she would  
21 submit written comments, arguments and/or medical  
22 documentation after receiving documents from MetLife. (AR  
23 0074)

24 To date, MetLife has failed to conduct an appellate  
25 review.

### 26 Conclusions Of Law

#### 27 **I. Jurisdiction And Venue**

28 This action involves a claim for long term disability  
benefits under an employee welfare benefit plan regulated by  
ERISA. As such, the Court has original jurisdiction over

1 this matter under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e).  
2 *See, e.g., Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58,  
3 63 (1987). Venue in the United States District Court for the  
4 Central District of California is invoked pursuant to 29  
5 U.S.C. § 1132(e)(2).

6 The parties do not dispute the facts requisite to federal  
7 jurisdiction and venue.

## 8 **II. Standard Of Review**

9 A "denial of benefits challenged under [29 U.S.C.]  
10 § 1132(a)(1)(B) is to be reviewed under a *de novo* standard  
11 unless the benefit plan gives the administrator or fiduciary  
12 discretionary authority to determine eligibility for benefits  
13 or to construe the terms of the plan." *Firestone Tire &*  
14 *Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). Generally,  
15 where the plan grants such discretionary authority to the  
16 administrator or fiduciary, the Court reviews the denial of  
17 benefits under the plan for an abuse of discretion. *Id.*  
18 However, even where a plan grants such discretion to the  
19 administrator or fiduciary, the Court will review the denial  
20 of benefits *de novo* when the administrator or fiduciary fails  
21 to exercise that discretion or engages in "wholesale and  
22 flagrant violations" of the procedural requirements of ERISA.  
23 *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955,971-72  
24 (9th Cir. 2006)

25 In this case, both parties agree that the Plan grants  
26 discretion to MetLife as a Plan fiduciary. Plaintiff however  
27 argues that the Court should conduct a *de novo* review of  
28 MetLife's denial of benefits, because MetLife failed to

1 exercise its discretion, by failing to respond or issue a  
2 decision on her appeal. Defendants, in response, contend  
3 that Plaintiff never perfected her appeal.

4 The Court finds that Plaintiff exercised her right to  
5 appeal, and perfected her appeal of MetLife's denial of  
6 benefits. The June 27, 2006 letter from Plaintiff's counsel  
7 was entitled "**APPEAL OF DENIAL OF LONG TERM DISABILITY**  
8 **BENEFITS.**" (AR 0076) The first sentence of the second  
9 paragraph of the letter unambiguously stated: "Ms. Roach  
10 hereby seeks review of MetLife's February 22, 2006, denial of  
11 long term disability benefits . . . ." (AR 0076).

12 Nonetheless, Defendants argue that Plaintiff failed to  
13 perfect her appeal because "the letter specifically  
14 instructed MetLife not to commence its appeal review, as  
15 plaintiff had requested further information, and said that  
16 she would submit 'written comments, arguments and/or medical  
17 documentation' at a later date." (Defendants' Trial Brief,  
18 p. 12). However, the Court finds, contrary to Defendants'  
19 argument, that the letter did not specifically instruct  
20 MetLife to wait to commence its appeal review. Although  
21 Plaintiff did in fact request further information and state  
22 that she would submit written comments, arguments and/or  
23 medical documentation at a later date, the Court finds that  
24 the letter, considered in its entirety, provided MetLife with  
25 notice that Plaintiff disagreed with and was appealing  
26 MetLife's decision to deny her LTD benefits. See *Kellogg v.*  
27 *Metropolitan Life Ins. Co.*, 549 F.3d 818, 826 (10th Cir.  
28 2008) (finding that MetLife was on notice that claimant was

1 appealing MetLife's decision to deny benefits where counsel's  
2 letter clearly stated that the claimant was appealing the  
3 decision to deny payment of benefits and outlined the general  
4 basis of claimant's appeal even though counsel also requested  
5 the entire claim file and requested 60 days to present  
6 additional information to MetLife); *Eppler v. Hartford Life*  
7 *and Accident Ins. Co.*, 2008 WL 361137, at \*10 (N.D. Cal. Feb.  
8 11, 2008) (finding that letter constituted an appeal where  
9 the letter stated "Mr. Eppler wishes to appeal The Hartford's  
10 decision. In order to permit him to do so, and to respond  
11 adequately to The Hartford's decision, we respectfully  
12 request that you provide to us the following documents and  
13 information. . . .").

14 Moreover, pursuant to the Plan, Plaintiff was not  
15 required to submit written comments, arguments, or additional  
16 documentation to perfect her appeal. The Plan provides in  
17 relevant part:

18 In the event a claim has been denied in whole or in  
19 part, you or, if applicable, your beneficiary can  
20 request a review of your claim by Metropolitan.  
21 This request for review should be sent to Group  
22 Insurance Claims Review at the address of  
23 Metropolitan's office which processed the claim  
24 within 60 days after you or, if applicable, your  
25 beneficiary received notice of denial of the claim.  
26 When requesting a review, please state the reasons  
27 you or, if applicable, your beneficiary believe the  
28 claim was improperly denied and submit any data,  
questions or comments you or, if applicable, your  
beneficiary deems appropriate.

Metropolitan will re-evaluate all the information  
and you or, if applicable, your beneficiary will be  
informed of the decision in a timely manner.

(AR 0044)(emphasis added). The Plan's language does not make  
the submission of comments, arguments, or additional

1 documentation mandatory before the Plan must consider an  
2 appeal.

3       As a result, after Plaintiff invoked her right to appeal  
4 under the Plan, MetLife had a responsibility under ERISA to  
5 determine Plaintiff's appeal, even though it never received  
6 any additional comments, arguments, or documentation from  
7 Plaintiff. See 29 C.F.R. 2560.503-1(i)(3)(ii) (requiring a  
8 plan administrator to issue a decision on an appeal within 45  
9 days after receipt of the claimant's request for review); 29  
10 C.F.R. 2560.503-1(i)(4) ("For purposes of paragraph (i) of  
11 this section, the period of time within which a benefit  
12 determination on review is required to be made shall begin at  
13 the time an appeal is filed in accordance with the reasonable  
14 procedures of a plan, without regard to whether all the  
15 information necessary to make a benefit determination on  
16 review accompanies the filing."); *Eppler v. Hartford Life and*  
17 *Accident Ins. Co.*, 2008 WL 361137, at \*11 (N.D. Cal. Feb. 11,  
18 2008) (holding that "plaintiff's October 3 letter was enough  
19 to trigger Hartford's duty to give the claim file a second,  
20 independent review, even if based on only the same record  
21 used by the first reviewer" and even though claimant's letter  
22 "implied that a more formal appeal would be forthcoming");  
23 *Kellogg v. Metropolitan Life Ins. Co.*, 549 F.3d 818, 827  
24 (10th Cir. 2008) (finding that MetLife had a responsibility  
25 under ERISA to ultimately issue a decision on claimant's  
26 appeal, where letter provided MetLife with notice that  
27 claimant was appealing MetLife's decision to deny her  
28 benefits).

1        Instead, MetLife failed to take any action on Plaintiff's  
2 appeal, and thus failed to exercise its discretionary  
3 authority under the Plan. Accordingly, the Court finds that  
4 de novo review is the appropriate standard of review. See,  
5 e.g. *Jebian v. Hewlett-Packard Company Employee Benefits*  
6 *Organization Income Protection Plan*, 349 F.3d 1098, 1106 (9th  
7 Cir. 2002) (holding that an administrator failed to exercise  
8 its discretion when it did not make a benefits decision  
9 within the 60 days specified by the terms of the plan and the  
10 applicable regulation, so that the ultimate decision rendered  
11 was "undeserving of deference"); *Abatie*, 458 F.3d at 972  
12 (stating that "[i]n general, we review de novo a claim for  
13 benefits, when an administrator fails to exercise discretion"  
14 and citing *Jebian's* holding in support); *Kellogg*, 549 F.3d at  
15 828 (applying de novo review where MetLife ignored claimant's  
16 request for documentation and for a review of MetLife's  
17 decision to deny benefits); *Kowalski v. Farella, Braun &*  
18 *Martel, LLP*, 2007 WL 2123324, at \*2 (N.D. Cal. July 23, 2007)  
19 (reviewing defendants' termination of plaintiff's disability  
20 benefits de novo where defendants never ruled on plaintiff's  
21 appeal); *Vaught v. Scottsdale Healthcare Corporation Health*  
22 *Plan*, 2009 WL 649806, at \*2 (D. Ariz. Mar. 10, 2009) (finding  
23 de novo review appropriate where Plan failed to exercise its  
24 discretionary authority by failing to act on claimant's  
25 appeal).

26        Because Plaintiff is entitled to de novo review, the  
27 Court gives no deference at all to MetLife's decision to deny

28 / / /



1 Plaintiff LTD benefits. *Kearney v. Standard Ins. Co.*, 175  
2 F.3d 1084, 1090 n.2 (9th Cir. 1999).

3 **III. Discussion**

4 Based on its review of the administrative record, the  
5 Court concludes that MetLife incorrectly denied Plaintiff LTD  
6 benefits under the terms of the Plan.

7 Under the terms of the Plan, Plaintiff is "disabled" if  
8 during the Elimination Period and the next 24 month period,  
9 she is unable to earn more than 80% of her Predisability  
10 Earnings or Indexed Predisability Earnings at her Own  
11 Occupation for any employer in her Local Economy.  
12 Plaintiff's Own Occupation means the activity that she  
13 regularly performs, as determined by *her employer*, and that  
14 serves as her source of income.

15 In this case, her employer, SCPMG, determined that her  
16 position as Project Manager/Ambulatory Care Registered Nurse  
17 Manager required overtime on a routine basis, and  
18 necessitated "frequent" stressful situations (34 to 66  
19 percent of the time) and "continual" interpersonal relations  
20 with others (67 to 100 percent of the time). (AR 0108)  
21 Furthermore, her employer determined that her position was  
22 not capable of being modified. (AR 0109) Although  
23 Plaintiff's "own occupation" under the terms of the Plan is  
24 not limited to the specific position she held with her  
25 employer, the administrative record is devoid of any evidence  
26 demonstrating that a similar position with her employer or  
27 any other employer would have different requirements or  
28 duties.

1       Based upon his diagnosis of Plaintiff with Depressive  
2 Disorder Not Otherwise Specified with Anxious Features and  
3 the evidence that Plaintiff's occupation required long hours  
4 and frequent stressful situations, Dr. Lopata concluded that  
5 Plaintiff was "temporarily totally disabled on a  
6 psychological premise[]." (AR 0221) He opined that "it is  
7 difficult to know if and when [Plaintiff] can return to her  
8 old employment setting . . . [F]rom a prophylactic point of  
9 view if she does so, she would have to have a setting where  
10 there is less than the average amount of stress." (AR 0221)  
11 Given that Plaintiff's own occupation required frequent  
12 stressful situations and was not capable of being modified,  
13 the Court concludes, based on Dr. Lopata's opinion which was  
14 amply supported by Plaintiff's medical records, that  
15 Plaintiff was unable to perform her own occupation and was  
16 disabled under the Plan.

17       There is scant evidence to contradict Dr. Lopata's  
18 opinion. Indeed, consistent with Dr. Lopata's opinion, both  
19 of Plaintiff's primary treating physicians, Dr. Hirsch and  
20 Dr. Park, instructed Plaintiff not to work due to her  
21 depression, anxiety, or stress. The only conflicting opinion  
22 is that of Dr. Petrie, who is not a psychologist, and who did  
23 not independently examine Plaintiff. Although he opined that  
24 "Ms. Roach could perform her own occupation with a different  
25 employer or in a different location or a different  
26 supervisor," Dr. Petrie neither analyzed nor made any  
27 reference to the fact that Plaintiff's position or occupation  
28 required frequent stressful situations or required overtime

1 on a routine basis. He relied solely on the physical,  
2 instead of the psychological, aspects of Plaintiff's  
3 occupation, and assumed, without any evidentiary support,  
4 that Plaintiff could perform her occupation with a different  
5 employer, in a different location, or with a different  
6 supervisor.

7 Accordingly, the Court finds by a preponderance of the  
8 evidence that Plaintiff was disabled under the "own  
9 occupation" definition of disability, and that MetLife  
10 improperly denied benefits.

#### 11 **IV. Conclusion**

12 For all of the foregoing reasons, the Court finds that  
13 MetLife incorrectly denied Plaintiff LTD benefits under the  
14 "own occupation" definition of disability under the Plan.  
15 Plaintiff is entitled to disability benefits through February  
16 25, 2006, the last day that the administrative record  
17 evidences that Plaintiff was disabled. (AR 0106) The Court  
18 does not consider whether Plaintiff is entitled to any  
19 benefits beyond February 25, 2006, or whether Plaintiff is  
20 entitled to benefits under the "any occupation" definition of  
21 disability under the Plan. The Court remands this action to  
22 MetLife for purposes of a calculation of benefits in  
23 accordance with these Findings of Fact and Conclusions of Law  
24 ("FFCL"), and for determination of whether the Plaintiff is  
25 entitled to LTD benefits beyond February 25, 2006.

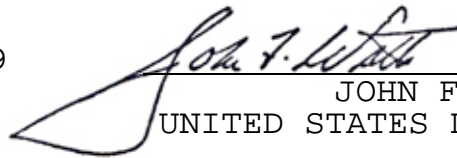
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1 Counsel shall meet and confer and prepare a proposed  
2 Judgement consistent with these FFCL. The proposed Judgment  
3 shall be lodged with the Court on or before May 26, 2009.

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6  
7 Dated: May 12, 2009



JOHN F. WALTER  
UNITED STATES DISTRICT JUDGE